IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8935 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARIMALKUMAR JAYANTILAL MODH

Versus

STATE OF GUJARAT

Appearance:

MS ROOPAL R PATEL for the Petitioner.

Mr.K.G. Sheth, Assistant GOVERNMENT PLEADER, for Respondents No. 1-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/01/2002

ORAL JUDGEMENT

1. Leave to correct the cause title by giving the correct address of the petitioner, as, according to the petitioner, now the petitioner is staying at the new address. Leave is accordingly granted. Such amendment may be carried out by the petitioner forthwith.

2. The father of the petitioner was serving as an Accounts Officer (Class II) with respondent No.4, and he

had put in more than 30 years of service in the Department. The father of the petitioner was suffering from Cancer and, ultimately, he died on 4.2.1999. Since the family of the deceased was not having sufficient income to sustain themselves, the petitioner applied for compassionate appointment in the prescribed form. However, a reply was given by the Department that since the monthly income of the family exceeds Rs.2,500/-, the petitioner cannot be given compassionate appointment. The order rejecting the prayer of the petitioner is at page 15 and by the said decision dated 6.11.1999, it is found that since the monthly income is more than Rs.2,500/-, the petitioner cannot be given compassionate appointment. The said decision is challenged by way of filing this petition.

There is also on record another order dated 10th July, 2000, wherein it is mentioned that the family pension income of the family is more than Rs.4,950/- and since it exceeds the prescribed financial limits, the petitioner cannot be given compassionate appointment.

3. At the time of hearing of this petition, it is argued by Ms.Roopal Patel, learned Advocate for the petitioner, that in view of series of judgments of this Court, the family pension is not required to be taken into consideration. One of such judgments, delivered in Special Civil Application No.11020 of 1993, is annexed with the petition at page 19. In paragraph 3, it has been observed in the said judgment as under :-

... ...

> 3. Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court in the case of C.B. Maru v. Dhanduka Nagar Panchayat, reported in 1993 (2) G.L.H. 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai v. State of Gujarat and Ors., reported in 1998 (1) GLH (UJ) 23. In C.B. Maru's case

(supra), this Court while placing reliance in the case of Smt. Phoolwati v. Union of India and ors., reported in AIR 1991 SC 469, has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/per month and her husband had died on 15th October, 1990. In the case of C.B. Maru (Supra), the other details of income regarding Dearness Allowance, Medical Allowance, etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1,000/-. In the present case, the father of the petitioner had died in April 1991 and, in the case of C.B. Maru (Supra), the date of the death of deceased is October, 1990 and, therefore, there is hardly a difference of about six months in the date of the death. Even if 50% Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50, i.e. Rs.967.50 and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1,000/-. In any case, the fact remains that this Court has taken the view in the case of C.B. Maru, that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (Supra) this Court, while placing reliance on C.B. Maru's case (supra), has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1,000/- merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the

pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1,000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure `A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1,000/-. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date a copy of this order is served upon the respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this Order and for that purpose, direct service is permitted.

... ..."

Under the aforesaid circumstances and considering the decision of this Court, the authority is now required to reconsider the said question in the light of the judgment of this Court. This petition is accordingly allowed. The impugned order, by which the claim of the petitioner is denied on the ground that the income of the family of

the deceased is exceeding prescribed limit, is set aside. The Authority may decide the said question of compassionate appointment afresh without taking into consideration the income of family pension.

4. This Special Civil Applicaiton is accordingly sent back to the appropriate authority for taking fresh decision. Since the petition is regarding compassionate appointment, the authority may take decision afresh in accordance with law and while considering the income of the family of the deceased employee, family pension income, as stated earlier, may not be taken into account. The decision may be taken again within a period of two months from the date of receipt of the writ from this Court.

Petition is allowed to the aforesaid extent. Rule is made absolute accordingly, with no order as to costs.

Direct service is permitted.

19th January, 2002 (P.B. Majmudar, J.)

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(apj)